

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: February 26, 2007

+ W.P.(C).No.6254/2006

PRASHANT VATS PETITIONER
Through: Mr. Arvind Nigam, Advocate and Mr.
Sanjeev Nigam, Advocate for the Petitioner.

Versus

UNIVERSITY OF DELHI & ANR RESPONDENTS
Through: Mr. V.P.Singh Sr.Advocate with
Mohinder J.S.Rupal, Advocate for the
Respondent No.1.
Ms.Latika Chaudhary, Advocate for the
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

Anil Kumar, J.

1. This order shall dispose of this writ petition against the order of the Delhi University canceling petitioner's examination of CEE, 2005 and further debarring him for five years from appearance in the examinations of Delhi University w.e.f June, 2005. The petitioner had appeared in the

CEE, 2005 on 29th May, 2005 and the result was declared on 13th June, 2005 and he was given question series no.14. After following the procedure as contemplated under rules and regulations, petitioner's examination for CEE, 2005 has been cancelled and he has been debarred for a period of five years for using unfair means in the examination.

2. Some relevant details of the petitioner regarding the year he qualified the Senior Secondary Examination, percentage of marks obtained by him in the senior secondary examination, percentage of marks in Physics, Chemistry and Mathematics, his roll number in CEE, 2005 examination, rank obtained by him in CEE, 2005; the question series which was given to him in CEE, 2005 examination and ranking of the petitioner in other competitive examinations to comprehend the disputes are as under:

Prashant Vats

Question Series	:	14
Roll No.	:	70044
Rank CEE, 2005	:	24
Rank AIEEE, 2005	:	1,01,125
Rank GGSIP, 2005	:	15,009
Year of passing		
School	:	2005
Marks in School	:	PCM 204 (Math59, Physics36+29, Chem 52+28)
Percentage of marks	:	68%

Marks before EDC out of
120 marks in 30 questions: 33

3. The petitioner scored following marks and his ranking in CEE, 2005 was as under:-

Name of the Candidate	Marks Obtained	Ranking in CEE,2005
Prashant Vats	528	24

4. The comparison of the answer book of the petitioner with the answer book of students, Rajat Parihar and Sandarbh Kapoor, who appeared in CEE, 2005 from different centres revealed unusual similarity. Rajat parihar and Sandarbh Kapoor were given series 14 and series 16 respectively and they had secured rank 20 and 25 respectively in CEE, 2005. On comparison and tabulation of their answers it was revealed that the questions which were answered incorrectly were almost the same and their incorrect options, as every question had four options, were also the same. It was pointed out that the questions in different series were the same and the only difference was in the arrangement of the questions i.e. same questions were shown at different serial numbers in different series.

The answers of questions which were found to be wrong of the petitioner and the students, Rajat Parihar and Sandarbh Kapoor were as under:-

Question numbers whose Answers were incorrect	Same Option (Answer) attempted
3	3
10	2
14	3
23	1
30	3
31	4
50	3
54	3
61	1
66	2
62	2
68	2
77	4
90	2
95	3
99	3
99	3
101	1
105	4
106	1
114	3
115	3
116	2
117	2
118	2
119	4
120	1
130	4
133	3
136	2
139	1

148	2
150	4
153	3
162	4

5. Another striking similarity in the answer books of the petitioner and the above named students was that they did not attempt the same questions i.e. did not give answer to the same question which was question no. 163 in series 14 which was at serial no. 153 in QPB series 16. Besides this question, petitioner and Sandarbh Kapoor also did not answer a question which was at serial no.62 in series 14 and the same question was at serial no. 112 in QPB series 16. Petitioner also did not answer question number 170.

6. The dissimilarities in answers which has led to slight difference in the marks of the petitioner with the other two students and their different ranking are as follows.

- i. The petitioner did not answer question 170 whereas Rajat Parihar and Sandarbh Kapoor had answered said question which was at serial no. 160 in series 16 with option 4.
- ii. The petitioner and Rajat parihar wrongly attempted question no. 65 with option 1. Petitioner did not answer question no. 62 whereas Rajat Parihar had answered the same question with option 4.

- iii. The petitioner marked options 4 and 1 for the question nos. 6 and 65 whereas Sandarbh Kapoor answered the same questions which were at serial no. 56 and 115 in QPB series 16 with options 1 and 4.

These miniscule differences in their answers had led to the different scores and different ranks in CEE, 2005 examination. The petitioner secured a rank of 24 whereas Rajat Parihar and Sandarbh Kapoor secured a rank of 20 and 25 respectively.

7. A petition seeking cancellation of result of CEE on the ground that the question paper had leaked and rigging of paper of CEE, 2005 was filed and an order canceling the admission of 33 students, on the ground that they had adopted unfair and illegal means, was passed on 25th July, 2005. A complaint was made to CBI. In the complaint it was disclosed that number of candidates scoring ranks 13, 25, 36 & 56 were 5, 3, 2 & 11 in numbers who had scored exactly the same marks in physics, chemistry and mathematics. Aggrieved by the said order some students had filed an appeal before the division bench which was disposed of by order dated 23rd August, 2005 and CBI was directed to complete the investigation within six weeks. The name of the petitioner did not figure in

the list of fourteen candidates furnished by the CBI. The house of petitioner was however raided by CBI.

8. The University of Delhi had given show cause notice to the petitioner dated 6th October, 2005 which was replied by him. The University of Delhi, however, cancelled his examination by Memorandum dated 21st October, 2005 against which the petitioner filed a writ petition being WP (C) 20512 of 2005. The University of Delhi withdrew the show cause notice which was given and the memorandum canceling the examination and as such the writ petition being WP (C) 20512 of 2005 was disposed of by order dated 8.2.2006 and the liberty was given to the University of Delhi to issue fresh show cause notices.

9. Pursuant thereto another show cause notice dated 23rd February, 2006 was issued to the petitioner calling upon him to explain in writing why disciplinary action as contemplated under Ordinance X-A of the Delhi University be not taken and the petitioner was directed to appear before the Examination Disciplinary Committee (EDC). The petitioner appeared before the EDC where the petitioner was asked to solve a question paper containing 30 questions. Considering the show cause notice, reply given

and other factors including the answers to the 30 questions given during the hearing, a notice was given on 7th April, 2006 asking the petitioner to show cause as to why the result of the petitioner for CEE, 2005 be not cancelled and he be further debarred for five years. After considering the reply given by the petitioner, the University of Delhi has debarred the petitioner for a period of five years and has also cancelled his examination for CEE, 2005 by order dated 19th April, 2006 on the ground that the petitioner has used unfair means in the examinations. The order was based on the facts that the ranking of the petitioner in AIEEE, 2005 conducted by Central Board of secondary Education was 101125 and in GGSIP, 2005 conducted by Guru Gobind Singh Inderprastha University was 15009 whereas in CEE it was 24; petitioner scored only 33 marks out of 120 marks in 30 questions which were put to the petitioner; on the QPB same questions were ticked twice using pen and pencil both; 36 wrongly attempted questions of the petitioner were same as that of Rajat Parihar; there was bunching of result in series 14 around ranks 20-25; encoding in the OMR of the petitioner matches with Sandarbh Kapoor (series 16) and a major bunching was around rank 25-30 in series 16; different series were created by relative shift of the questions in a subject and key which belongs to series 14 were derived from key for series 16; encoding done

on the OMR sheet of Sandarbh Kapoor after shifting of questions in various subject matches to a large extent with the encoding on the OMR sheets of the petitioner; key for questions 1-180 found written in the QPB of Sandarbh Kapoor and the petitioner had erased written material on pages 8 and 9 of his QPB with the intention of hiding information though there was no necessity for erasing any information written on QPB.

10. The show cause notice dated 23rd February, 2006 was issued to the petitioner stipulated the earlier orders passed by the High Court and superseding the earlier show cause notice and memorandum dated 21st October, 2005. It also mentioned about the scrutiny done on the basis of a complaint which revealed the bunching of results/ranks and about the questions which were left unattempted or the questions which were wrongly answered tallied almost completely which made the University to believe that certain malpractices were adopted in the course of the examination CEE, 2005. It also stipulated the names of the candidates in respect of whom bunching was noticed. In the show cause notice to the petitioner, it was categorically stated that the copies of OMR sheets of all these candidates were supplied to him. The copies of expert reports were also given to the petitioner. It was also mentioned that the phone bearing

numbers 9872899095 and 9899214819 were recovered by the invigilators from Mr. Anshul Aggarwal(Roll No.16628) and Mr. Saumya Agarwal (Roll No.68059). Mr. Anshul Aggarwal had confessed that the last SMS received on his mobile phone was `03244312241310" which was the answer from second numeral to last but one, of questions number 168 to 179. The OMR answer sheet is printed in blocks of five rows, each row corresponding to one question and each row has four ovals marked 1 to 4. The numbers in the ovals refer to the options for each question as set out in QPB. Any key to answers to these questions would consist of five digit numbers having numerals from 1 to 4. It was stated that the said incident of recovery of mobile phones and communication of messages in digital form had created doubts that unfair means were used in CEE, 2005. In Para 6 of the notice given to the petitioner the result of scrutiny of QPB and OMR answer sheets of the petitioner was given. The petitioner had given reply to the notice issued to him. Para 6 of the show cause notices given to the petitioner and his reply dated 28.2.2006 are as under:

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6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 24. The scrutiny revealed as under:

6. That it is not understood why my results were scrutinized in detail since it is the stand of the University that it was the results of the candidates detailed in paragraph 3 alone whose results were scrutinized in detail. The contents of the paragraph under reply are accordingly contradictory to the assertion of the University in paragraph 5 of the said Show Cause Notice. It is, however, a matter of record that I secured rank 24 at the said examination.

It is further stated that the assertions of the University in the paragraph under reply are contrary to the earlier Show Cause Notice dated 6.10.2005, the Memorandum dated 21.10.2005 as also the Counter Affidavit filed to Writ Petition (Civil) No.20512 of 2005 are at variance with each other and also contrary to the allegations sought to be leveled in the Show Cause Notice under reply. I crave leave to refer to and rely upon the said documents in this behalf at an appropriate stage if found necessary.

(i) The QPB in respect of Q.Nos.36, 37, 39, 40, 43, 44, 45, 46, 48, 49, 50, 51, 56, 57, 59, 60, 61, 63, 64, 67, 68, 69, 70, 77, 80, 81, 82, 89, 92, 94, 99, 120, 124, 128, 138, 144, 147, 148, 149, 150, 152, 153, 156, 157 and 168, you have ticked two options. However, only one out of two options ticked has been encoded in the OMR sheet.

(i) That the allegation that in respect of a few questions I have ticked two options on the QPB, however, only one of the said answers has been encoded in the OMR answer sheet. This may be a fact that is borne out from the record however it is not understood how the said fact is material to allege use of unfair means by me and more particularly by way of receiving SMS messages on a mobile phone.

It is further not understood how the manner and mode of answering his questions devised by me for the said examination has been interpreted by the University to mean that I have used unfair means at the said examination.

Moreover it is very common for a candidate to initially mark certain option as a probable answer and subsequently arrive at a different conclusion and give a different answer in the answer sheet. I am in the habit of marking preliminary answers with regard to questions of which I was not sure and had initially left those questions and after attempting/answering the questions of which I was relatively sure, I devoted time and come to the correct answers or the answers which appeared to me to be correct. In any event I have encoded only one option on the OMR answer sheet which is what a candidate is required to do. The purport of the allegation sought to be leveled is not understood in this behalf.

(ii) As per subject experts, the nature of the questions asked was such that in majority of cases some rough work was required, particularly in Physics and Mathematics (Encl.1). However, you have done little rough work, the scribbling against Q.Nos.61, 62, 63, 122, 128, 130, 131, 135, 138, 139, 140, 144, 147, 148, 152, 153, 155, 156, 157 and 168 and some calculations done against Q.Nos.34, 35, 36, 37, 38, 39, 42, 43, 47 are inconclusive.

(ii) That the contents of the paragraph under reply are baseless apart from being inconsistent with the earlier stand of the University in this behalf. It is submitted that fact that there was absence of rough work in solving the alleged difficult questions even otherwise does not indicate anything suspicious. It is stated that I had done rough work for my reference as per my requirement. It would be relevant to point out that in objective type paper where 180 questions are to be answered in 180 minutes, speed and time management is the key to success. Accordingly, like various other candidates in view of the four optional answers I too used the "process of elimination" whereby the obvious incorrect answers were eliminated and rough work was done for that purpose and by the same process the answer was sought to be given to the said question. In this process, it was not found necessary that with respect to all questions a detailed rough work be carried out. Even otherwise, neither the examination rules nor the authorities require a candidate to show detailed step-wise calculation to show the manner of arriving at the answer. Furthermore it has not been disclosed who the so called experts are who have given their opinion to the University. The same has in any event not been made available to me. The same is accordingly violative of the principles of natural justice. It seems improbable that even an expert would be able to answer all 180 questions within the time stipulated after detailing all the steps and calculations required to arrive at the correct answer. It is a matter of

(iii) The serial numbers of thirty six (36) wrongly attempted questions as well as the options encoded therein match exactly with that of the candidate having Roll No.61962 who appeared for the CEE-2005 at a different centre and was given booklets belonging to the same series as yours. As opined by the expert, this kind of similarity is not possible without employing some unfair means.

(iii) That the contents of the paragraph under reply further indicate that the University has proceeded on conjunctures and surmises. It is evidenced from a reading of the contents of paragraph 6 (iii) that there is no direct evidence available with the University against me and that the University has proceeded to issue the captioned Show Cause Notice to me on the basis of probability and which is not based on any cogent reasoning or material. The alleged similarity between my result and that of 1 other candidate who allegedly took the said examination at various other centers with regard to unattempted and wrongly attempted questions is not at all a striking feature that ought to be held against me to level a serious allegation of having used unfair means at the said examination. Admittedly more than 55,000 students took the said examination and my result allegedly bearing some similarity with 1 other candidate is a probability that not highly improbable. Moreover the said similarity allegedly pertaining to 36 unattempted questions out of a question paper carrying 180 questions too is not a striking feature which could be held against me to indite me for having used unfair means at the said examination.

Moreover the report of any alleged expert obtained by the University and held against me to allege that I have used unfair means at the said examination has not been made available to me. This is clearly violative of the principles of natural justice and the said opinion of the alleged experts ought not to be held against me in the absence of the same having been furnished to me. The University

(iv) Some hand written material on pages 8 and 9 of the QPB has been erased with the intention of hiding some information although lot of other written material on these pages has been left untouched.	(iv) That the contents of the paragraph under reply are contradictory to the assertions of the University in the preceding paragraphs. The University on the one hand seeks to allege that no rough work has been done by me whereas on the other hand markings made by me are sought to be deciphered to my detriment by the University to be something surreptitious is not only unfair but also unacceptable. The allegation is entirely unsubstantiated and does not in any manner connect me with the use of any unfair means at the said examination.
(v) You had marked in the QPB answers to some questions in pencil. After clandestinely receiving assistance in course of the CEE-2005, you had marked the right options in pen which tally with the options encoded in the OMR sheet.	(v) That the contents of paragraph 6(v) are entirely baseless and based on conjunctures and surmises. There is some pattern allegedly deciphered by the University that is sought to connect me to the said candidate which is unknown to me and not explained by the University. The allegation sought to be made against me is entirely speculative. The University does not even allege that I was carrying a mobile phone to the examination but alleges that I clandestinely received assistance during the course of the said examination is vague and discloses complete non application of mind. It is not understood how this could be possible. The University too does not attempt to decipher this. The contents of the paragraph under reply are baseless and conclusive of my innocence.

11. The respondents considered the show cause notice, reply to show cause notice, hearing given to the petitioner, performance of the petitioner

in 30 questions given to the petitioner during hearing, performance of the petitioner in other competitive examinations, percentage of the petitioner in qualifying examination and his percentage in PCM in qualifying examination and the opinions of the experts, his QPB and OMR sheets. The respondent nos. 2 & 3 passed the order dated 19th April, 2006 and stipulated that they considered the matter in detail on the basis of the findings of Examination Disciplinary Committee, available records, candidate's submission in writing and in oral and the reply to the show cause notice and the reply to the notice proposing punishment against him. The petitioner was found guilty of use of unfair means in CEE, 2005 held on 29th May, 2005 and issued the memorandum dated 19th April 2006 under the provision contained in Clause 13 read with Clause 9 of Ordinance X-A of the University.

12. The petitioner has impugned this order in the writ petition. The learned counsel for petitioner has argued at length pointing out the differences in the show cause notice given to the petitioner at different times. In the first show cause notice dated 6th October 2005 it was contended that the petitioner carried the mobile phones with the dishonest intention of misusing it and received SMS messages during the CEE,

2005 and the petitioner contact with Pankaj Dahiya/Himanshu Sharma/Lalit Hooda for the use of unfair means had been established which was also confirmed by the disclosure statements of these persons. The emphasis was also laid in variations in show cause notices and the complaint filed with Central Bureau of Investigation and the grounds on which the earlier memorandum dated 21st October 2005 was challenged.

13. The earlier show cause notice had been withdrawn and also the memorandum by which punishment was inflicted. While withdrawing the earlier show cause notice, the liberty was granted to the respondents to issue fresh show cause notice and consequently fresh show cause notice dated 23rd February, 2006 was issued to the petitioner. When the liberty was granted to the respondents to issue fresh show cause notice, there was no restriction from issuing the fresh show cause notice on the same grounds as were taken by the respondents in the earlier show cause notice. The petitioner had also not challenged the order granting liberty to the respondents to issue fresh show cause notice. Consequently some variation in the earlier show cause notice and the show cause notice dated 23rd February, 2006 will not be very material to impugn the order passed pursuant to subsequent show cause notice given by the respondents.

14. While challenging the notice dated 23rd February, 2006, the learned counsel for the petitioner has emphasized on the fact that the mobile phone was not recovered from the petitioner and the name of the petitioner did not appear in the list of 21 candidates which was prepared on the basis of bunching of marks. The petitioner has also challenged the order imposing punishment on the ground that the statistical theory about the statistical impossibility of commonality of result is not applicable to the petitioner and the Probability Theory was never put to him in the show cause notice. It was pointed out that ticking of two options on the QPB and encoding only one of the answers on the OMR sheets cannot be considered as a material fact to allege use of unfair means. It was also pointed out that allegation of inadequate rough work was based on surmises and conjecture. Regarding the personal hearing given to the petitioner it was contended that it was merely an eye wash. During personal hearing the direction by the respondents to attempt question paper containing 30 questions was alleged to be impermissible.

15. The petitioner also challenged the order on the ground that it was passed on the new grounds which were not alleged in the show cause

notice dated 23.2.2006 by the respondents and that the petitioner's OMR sheet was not compared with any other student of the same series i.e series 14 and the show cause notice issued to the petitioner by the respondents had nowhere sought any explanation from the petitioner regarding the alleged similarity in unattempted and the wrongly attempted questions in the OMR sheets of the petitioner and that of Mr. Sandarbh Kapoor who was given series 16 and that such a comparison was based on mere conjecture and surmises.

16. Petitioner, as regards to ticking two options on the QPB in respect of Q.Nos.36, 37, 39, 40, 43, 44, 45, 46, 48, 49, 50, 51, 56, 57, 59, 60, 61, 63, 64, 67, 68, 69, 70, 77, 80, 81, 82, 89, 92, 94, 99, 120, 124, 128, 138, 144, 147, 148, 149, 150, 152, 153, 156, 157 and 168, contended that initially the probable answers were marked by the petitioner with regard to questions, the answers of which he was not sure and later on

arriving at a different conclusion he marked a different answer. As regards to the alleged similarity between the un-attempted and wrongly attempted questions of the petitioner and that of the other candidate, Rajat Parihar, and an effort to erase hand written material at page 8 and 9 of the QPB by the petitioner it was contended that it was not a striking feature to level a

serious allegation of having used unfair means at the said examination. Further no keys were found on the QPB of the petitioner and that the allegations leveled against him are entirely speculative and that there was some pattern allegedly deciphered by the respondents to connect the petitioner to candidates unknown to the petitioner so as to implicate him in the case of use of unfair means at the examination.

17. The learned counsel for the petitioner has argued that the respondents have failed to prove beyond reasonable doubt the use of unfair means by the petitioner. However what is to be seen is whether on the basis of preponderance of probability it could be inferred that the petitioner have used unfair means during the examination. Strict rules of evidence act and the standard of proof envisaged therein do not apply to such proceedings taken by the University against the candidates regarding the use of unfair means in the examination. What is to be seen is that the material germane and relevant to the facts in issue had been placed and considered. What is also to be considered is that the inference have been drawn from the evidence and not based on the speculation and conjectures. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw

inferences that the facts are more probable. In *Maharashtra State Board of Secondary and Higher Education Vs K.S.Gandhi & ors* (1991) 2 SCC 716, the Supreme Court had held that in administrative bodies and domestic tribunals the standard of proof required is preponderance of probabilities and not proof beyond reasonable doubt and the probative value is to be judged on the basis of particular facts and circumstances. The Supreme Court had held on page 748 as under:

"37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not

proof beyond reasonable doubt “but” the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

18. The learned counsel for the petitioner has relied on Mohinder Singh Gill Vs Chief Election Commissioner, AIR 1978 SC 851; Sawai Singh Vs Stat of Rajasthan, AIR 1986 SC 995; R Nitya Priya Puri Vs Rvr. Div. Officer Thirukoyilur, (1998) 8 SCC 508; AIR 1981 SC 818; Union of India Vs H.C.Goel, AIR 1964 SC 364; Bank of India Vs Degala Suryanarayana, (1995) 5 SCC 762; Hanumant Govind Nargulkar Vs State of M.P, AIR 1952 SC 343; Maharashtra State Board of Secondary and Higher Education Vs K.S.Gandhi & ors (1991) 2 SCC 716; Om Kumar Vs Union of India, (2001) 2 SCC 386; B.C.Chaturvedi Vs Union of India (1995) 6 SCC 749; Union of India Vs G.Ganayutham, (1997) 7 SCC 463 and Ranjit Thakur Vs Union of India, (1987) 4 SCC 611.

19. In Mohinder Singh Gill (supra) the returning officer had postponed the declaration of result of election on account of disruption due to mob

violence and an order for repoll was passed under Article 324 of the Constitution of India and under section 153 of Representation of People Act. In the Special Leave Petition before the Supreme Court it was held that the writ petition challenging the cancellation coupled with the repoll amounts to calling in question, a step in 'election' and the same is barred under Article 329 (b) and therefore the writ was not maintainable and the only remedy was by way of an election petition. It was also held by the Apex Court that when a statutory functionary makes an order based on certain grounds, its validity must be judged by reason so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise because otherwise an order as in the beginning, by the time it comes to court on account of challenge get validated by additional grounds later brought out. In Sawai Singh(supra) the services of the appellant who was the returning officer for panchayat elections, were terminated on the ground that he showed undue favor to one of the contesting candidates. The Supreme Court had held that the charges were not clear and charges involving consequences of termination of service must be specific, though a departmental inquiry is not like a criminal trial. In R Nitya Priya (supra) after the completion of the departmental inquiry and during the pendency of writ petition at the High

Court, some additional evidence came to light and relying upon the same and observing that the document is crucial and fatal to the case of the petitioner, the High Court had upheld the order impugned. In these circumstances it was held by the Apex Court that the High Court should have remanded the matter back to the department rather than sitting and adjudicating upon it. In *Swadeshi Cotton Mills (supra)* the Apex Court had observed that where a statute does not, in terms, exclude a prior hearing but contemplates a post decisional hearing amounting to a full review of the order on merits, then such a statute would be construed as excluding the *Audi Alteram Partem* rule at the pre decisional stage. And if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, as it would paralyze the administrative progress or frustrate the need for utmost promptitude. Therefore, it was held that the rule of fair play “must not be jettisoned save in very exceptional circumstances where

compulsive necessity so demands” and the Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. And thus the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

20. In Union of India Vs H.C.Goel (supra) the Supreme Court had held that in respect of an order of dismissal of public servant, High Court can enquire whether the order is based on no evidence and mala fide exercise of power need not be shown to prove that the order is based on no evidence. It was held that the writ petition will be maintainable provided the dismissed employee is able to satisfy that the findings of enquiry were based on no evidence. In Bank of India (supra) the petitioner was found fit for promotion, however the finding of promotion committee was not given effect to on account of pendency of criminal cases. The criminal cases, however ended in favor of the respondent and the order of promotion was not issued and the writ petition was filed where an interim order was passed which was upheld by a division bench. Before the Apex Court the issue was whether the single judge was justified in interfering with the findings recorded by the enquiry officer. It was held that the disciplinary

authority after taking into consideration the evidence, finding and reasons recorded by the enquiry officer, is entitled to give a different finding of its own supported by reasons and based on the evidence on record and such a finding of disciplinary authority will not be subject to judicial review. In *Hanumant Govind Nargundkar & anr (supra)* the appellant was found guilty of offences under section 120-B and under section 465 of Indian Penal Code which conviction was partly upheld by Sessions Judge. The matter before the Supreme Court was whether the Supreme Court can interfere with the two concurrent findings of the court of first instance and court of appeal. It was held that if the finding of fact is based on the testimony of an accomplice it should not be accepted unless it is corroborated by some other evidence on record and in case of substantial and grave injustice; the Apex Court can interfere despite concurrent finding of facts. Regarding appreciation of circumstantial evidence it was held that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every other hypothesis but the one

proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

21. Relying on Maharashtra State Board of S & H.S Education (supra) the petitioner contended that in administrative decisions, the order/decision may not contain reasons but the record should disclose reason which must be clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The Supreme Court had held in this judgment that the reasons are harbinger between the minds of the maker of the order to the controversy in question and the decision or conclusion arrived at. Such reasons exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion and they assure an inbuilt support to the conclusion/decision reached. It was further observed that the order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative, fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned

consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person. In *B.C.Chaturvedi (supra)* it was held that where the finding of disciplinary authority are based on some evidence, then the court/Tribunal should not interfere with the same and will not re-appreciate the evidence and substitute its own findings. In this matter the Central bureau of investigation had concluded that the petitioner working as an income tax officer possessed assets disproportionate to that of his own income, however as the evidence was not sufficient the case could not be registered under the Prevention of Corruption Act. However, in the departmental proceedings initiated against him, he was dismissed from service. Central administrative tribunal upheld the charges, however, altered the punishment imposed. Relying on *Bidyabhusahn Mohapatra*, AIR 1963 SC 779, *Bhagat Ram Vs State of H.P.*, (1983) 2 SCC 442 and *Rangaswami Vs State of T.N.*, 1989 Suppl (1) SCC 686, it was observed by the Apex Court that it has not been laid down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or appellate authority. However,

disciplinary authorities being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose an appropriate punishment keeping in view the magnitude and gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or by the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/applicant authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In *G. Ganayutham (supra)* it was held that according to *Wednesbury* case, while examining 'reasonableness' of an administrative decision the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bonafide one. The decision could be one of many choices open to the authority but it was for that authority to

decide upon the choice and not for the court to substitute its view. In this case 50% of respondent's pension and 50% of gratuity were withheld on proof of his misconduct. The tribunal had interfered with the quantum of punishment and had also substituted its view of the punishment. The Apex court had set aside the punishment imposed by the tribunal and had restored the punishment awarded by the Departmental authorities. The apex court had also summarized the position of proportionality in England and in India as follows:

- (1) *To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury⁸ test*
- (2) *The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational — in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU⁹ principles.*
- (3)(a) *As per Bugdaycay²⁰, Brind¹² and Smith¹⁹ as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.*
- (3)(b) *If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.*
- (4)(a) *The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary*

role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

- (4)(b) *Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.*

22. The quantum of punishment in disciplinary matters is primarily for the disciplinary authority to decide and the jurisdiction of the High Court's under Article 226 of the Constitution or of the administrative tribunals is limited and is confined to the applicability of one or other of the well-known principles known as the Wednesbury principles. This was held by the Supreme Court in Om Kumar (Supra). It was held that the courts are confined to a secondary role and only has to see whether the administrator has acted illegally or has omitted relevant factors into consideration or whether his view is one which no reasonable person could have taken and if his action does not satisfy any of these conditions it is to be treated as arbitrary.

23. This petition and a number of petitions were heard together and the arguments of other counsel were also adopted by the counsel for the petitioner. The learned counsel for some other candidates Shri Anil Grover has also relied on Ram Phal Kundu Vs Kamal Sharma, 2004 II AD (S.C) 261; Marathadawada University Vs Seshrao Balwant Rao Chavan, AIR 1989 SC 1582; State of U.P Vs Maharaja Dharmander Prasad Singh; (1989) 2 SCC 50; Bhupendre Singh Vs University of Delhi & ors, 2001 II AD (Delhi) 293 and R K.Sharma Vs University of Delhi & ors, 2004 IV AD (Delhi) 445 to contend that there was no emergent situations nor can be made out from the files and the Vice Chancellor was not authorized to act as the power is with the Executive Council. This plea was not taken by the Counsel in the writ petition filed by him on behalf of some other candidates who have also been awarded the punishment for use of unfair means in CEE, 2005 examination in similar circumstances as that of the petitioner. The counsel for petitioner in the present writ petitions had also adopted the arguments of counsel for other candidates and therefore, these pleas are also dealt with.

24. Where the power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of

performance are necessarily forbidden, was held in Taylor Vs Taylor, 1876 (1) Ch. D 426 and this view has been followed by Indian Courts in a series of cases. In Ram Phal (supra) the dispute was as to which one of two persons was nominated by the Congress party. Relying on paras 13 and 13A of the symbols order, it was held that they lay down exhaustive and complete procedure for determining whether a candidate has been set up by a party or not. In Marathawada University (supra) it was held that it is a settled principle that when the act prescribes a particular body to exercise the power, it must be exercised only by that body and it cannot be exercised by the others, unless it is delegated and the law must also provide for such delegation. In this matter a Deputy registrar was required to discharge the duty of controller of examination. Bills raised for the printing work done during the annual examination were not cleared immediately and so an inquiry was set up. Executive council which also had Vice Chancellor, made certain observations against the Deputy Registrar, however, another committee gave a complete clean chit to him. Later on the Vice-Chancellor, instead of executive council, directed a departmental inquiry which action was subsequently ratified by the executive council. It was held that the act of the Vice-Chancellor was without any authority and the defect could not be cured by subsequent

ratification. In Indian Railway Construction Company (supra) it was held by the Supreme Court that the Court will be slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. In State of U.P Vs Maharaja Dharmander Prasad Singh (supra) it was held that judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, against the decision, but is confined to the examination of the decision-making process. It was held that when an authority hands over its discretion to another body it acts ultra vires. Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority.

25. In Bhupender Singh (supra) the Vice-Chancellor had invoked the emergency power under the ordinance in appointing the governing body of a college which power is vested in executive council. It was held that the opinion of the authority originating from its own subjective satisfaction regarding the existence and satisfactions of the conditions precedent for exercise of power under statute is subject to judicial review. A single judge of this court in R.K.Sharma (supra) had held that the scheme of the Act, statute and Ordinances of the University of Delhi show that the Vice

Chancellor of the University is an office of the University. The executive council is a statutory body of the University. The Vice-Chancellor has been conferred with executive powers to act in emergent situations and so in nominal course the Vice-Chancellor cannot exercise executive powers except in emergent situations.

26. The petitioner's plea is that only the Controller of examination could have exercised the power but no post of controller of examination is provided under XA-12. According to learned counsel for the petitioner, no emergent situations have been shown for the Vice Chancellor to exercise the power of Executive Council. It was contended that nothing has been established by the respondents that executive Council could not be convened. By non consideration of the cases of the petitioner, the valuable rights of the petitioner have been denied. According to counsel for petitioner, VC has exercised powers under the statute 11(G)(4) of the University Calendar which falls within the exclusive domain of the Executive Council.

27. Statute 11(G)(4) of University Calendar empowers the Vice Chancellor to exercise powers in emergent situations which calls for

immediate action and can later on report the same for confirmation at the meeting to the EC which, in ordinary course, would have dealt with the matter. It is not disputed that the Executive Council is the competent authority in the present facts and circumstance. This is also not disputed that Clause 9 of the ordinance X-A empowers the Executive Council to impose any punishment on candidate(s) who are found guilty of use of dishonest or unfair means or disorderly conduct in the examination on the recommendation of the EDC. Further statute 11-K (3) (f) of the University Calendar empowers the registrar to call for an emergent meeting of EC only in cases where neither the Vice Chancellor nor the Pro-Vice-Chancellor nor the Director, South Delhi Campus or the Dean of colleges is able to act. Thus in an emergency if Vice Chancellor is present meeting of Executive Council is not to be called. What is an emergent situation in which power conferred under the statute 11(G)(4) of the University Calendar can be exercised by the Vice Chancellor.

“Emergency” is defined in Black’s Law Dictionary (Sixth Edition) as:- A sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingency or complication of circumstances; a sudden unexpected occasion for action; exigency; pressing necessity. Emergency is an unforeseen combination of circumstances that calls for immediate action without time for full deliberation.

In the circumstances whether the Vice Chancellor was justified in exercising powers conferred on him under Statute 11 G (4) of the University Calendar or has he transgressed upon the powers which fall within the exclusive domain of the Executive Council. The circumstances as were there were sufficient to exercise emergent powers by the Vice Chancellor. From the perusal of the Statutes 11-G and 11(K) of the University Calendar it is apparent that emergent meeting of EC can not be called when the Vice Chancellor or the Pro-Vice-Chancellor or the Director, South Delhi Campus or the Dean of colleges is able to act. Under statute 11-G (4) of the University Calendar in an emergency situation which calls for an immediate action, the Vice Chancellor who is also the ex-officio Chairman of the Executive Council, has been empowered to deal with the matter and take action himself and then report the same to the Executive Council. Thus even if a matter which falls within the exclusive domain of the Executive Council, in emergent situations, the Vice Chancellor can deal with and decide the same himself and such a decision cannot be challenged on the ground that it has been made incompetently.

28. In the present case by orders dated 23.11.2005 and 5.12.2005, this court had directed the respondents to issue fresh show cause notices to the candidates and had further directed them to complete enquiry within 6 weeks which period was further extended up to 24th April 2006 vide order dated 29.3.2006 since the enquiry was not complete. Thus within a time frame the University was required to decide the matter. The executive council meeting was scheduled to take place in May. But since the decision was to be taken till 24th April, 2006, the emergent meeting of EC could not be called since Vice Chancellor was available. Since the Vice Chancellor was available there was no necessity for calling of the emergency meeting of the Executive Council by the Registrar. The argument put forward by the petitioner that instead of exercising the power which falls within the exclusive domain of the Executive Council, the respondents should have sought extension of time from the Court as there was no emergent situation, is not sustainable in the present facts and circumstances. In view of the charge of use of unfair means, the admission of all the candidates whose names were included in the list of candidates suspected of using unfair means in the CEE, 2005, was kept on hold till the decision of the University and since the academic year of so many students was involved, it called for expeditious enquiry and

decision which was to be arrived at within a time frame and as such the matter could not have been delayed as the new academic year was to start soon in July. Further the sanctity of the entrance examination was also at stake and the offence was of serious nature which called for immediate action and therefore exercise of emergent power by the Vice Chancellor cannot be faulted in the facts and circumstances. The plea of the petitioner, which has not been taken in the petition that there was no emergent situation, is not sustainable in the present facts and circumstances. The cases for use of unfair means were to be decided expeditiously as delay could have caused a lot of hardship and inconvenience. Therefore it cannot be said that there was no emergent situation and the Vice Chancellor was not justified to act. The cases relied on by the petitioner are distinguishable as it had been held that there was no emergent situation in those cases. But in the case of the petitioner it is apparent that there was emergent situation and in the circumstances the Vice Chancellor has not transgressed upon the power which falls under the exclusive domain of the Executive Council. The Vice Chancellor had passed the order imposing punishment in exercise of power conferred on it under Statute 11(G) (4) of the University Calendar. The other plea of the petitioner that the procedure as laid down under Ordinance X-A rule 9 and

13 has not been complied with by the respondents as the second show cause notice was issued by the Registrar which is not an executive body is also not acceptable on the similar reasoning in the facts and circumstances. The decisions of respondents, therefore, can not be set aside on these grounds raised by the petitioner.

29. The counsel for the petitioner has relied on various observations in different cases cited during the arguments. The observations made in most of the cases is not the ratio of the cases relied on by the counsel. A case is only an authority for what it decides as observed by the Supreme Court in *State of Orissa v. Sudhansu Sekhar Misra* MANU/SC/0047/1967:-

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in *Quinn v. Leatham*, 1901 AC 495:

"Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified

by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically Page 2009 from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

30. In *Ambica Quarry Works v. State of Gujarat and Ors.*

MANU/SC/0049/1986 the Supreme Court had held:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

31. In *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2

SC 111 (vide para 59), the Supreme Court had held:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

As held in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.* (AIR 2004 SC 778), a decision cannot be relied on without disclosing the factual situation. In the same judgment the Supreme Court also observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In *London Graving dock Co. Ltd. v. Horton* (1951 AC 737 at p.761),

Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of *Wiles, J* as though they

were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to distract from the great weight to be given to the language actually used by that most distinguished judge."

In *Home Office v. Dorset Yacht Co* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in setting of the facts of a particular case."

32. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words

of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr.. To decide therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

33. The precedents relied on by the petitioner's counsel and other counsel, therefore, have to be considered with this settled law, as the observations made in the judgments cited were referred to and relied on, without advertng to the ratio of the cases cited.

34. The respondents have relied on 1959 SCR 1424, Ghaio Mall & Sons vs. State of Delhi and Others, AIR 1966 SC 875, Board of High Scholl and Intermediate Education, U.P. and another Vs. Bagleshwar

Prashad and another; 1967 (3) DLT 438, N.K. Mohd. Mustaff vs. Union of India & others, (1970) 1 SCC 648; Bihar School Examination Board Vs. Subhash Chander Sinha and others; AIR1973 Allahabad 1, Triambakpati Tripathi Vs. The Board of High School and Intermediate Education, U.P.,Allahabad; (1975) 3 SCC 602, State of Bihar and others Vs. Dr. Ashish Kumar Mukherjee and others; (1994) 5 SCC 208, Guru Nanak Dev University and another vs. Harjinder Singh and another; (2003) 9 SCC 237, Union Public Service Commission vs. Jagannath Mishra and ors and (2005) 7 SCC 338, V. Ramanna vs. A.P. SRTC and others in support of their pleas and contentions.

35. The respondents have produced the original Question Paper Booklets of the petitioner and his OMR answer sheets. The petitioner has prayed for a writ of certiorari for quashing the impugned memorandums dated 19th April, 2006 canceling the result of the petitioner in CEE, 2005 and also debarring the petitioner from appearing in any future examination of University of Delhi during a span of next five years from 2005-2006. For issuing a writ of certiorari, this court can peruse the entire record of the proceedings, QPB and OMR sheets and may also ascertain reasons if

they are available from the record which may not have been recorded categorically in the order sought to be quashed.

36. The respondents have also produced the writings executed by the petitioner stipulating that he had received the photocopy of QPB and received the documents filed by Central Bureau of Investigation and also the copies of the letters forwarding the documents to the petitioner. The resolution No.18(1) of Executive Council of Delhi University dated 5th May, 2006; note of the Registrar duly approved by the Vice Chancellor; order of the Vice Chancellor invoking his power under the Statute 11(G)(4) in pursuance of the report of the EDC; constitution of Examination Disciplinary Committee; initiation of the action against the candidates containing noting by the OSD (Exams), i.e., Controller of Examination; office order No.632 dated 12th July, 1997 and taking over charges as OSD (Examination) by Shri B.S.Garg dated July 14, 1997 have also been produced.

37. The respondents produced the original QPB as well as the OMR sheets of the petitioner as well as the other candidates between whom the alleged bunching was noticed. On the QPB of the petitioner it was noticed

that an attempt was made to erase certain written material on page nos. 8 and 9 whereas other written material was left untouched and the same were encircled during investigation. The digit keys were noticed on the QPB of the candidate Sandarbh Kapoor on space provided for rough work. There was no necessity to erase any thing written on the QPB by the petitioner. The petitioner failed to give any satisfactory explanation about erasing the material written on pages 8 & 9 of his QPB.

38. The petitioner, though in his writ petition has denied that he received keys for answers to the questions in the QPB from some external source, however, he was unable to explain the striking similarities in wrong answers and wrong options marked by him when compared with other candidates. The questions which were not attempted by the said petitioner are also almost the same as that of other candidates namely, Rajat parihar and Sandarbh Kapoor. The version given by the petitioner that though he has ticked two options on the QPB in respect of question nos. Q.Nos.36, 37, 39, 40, 43, 44, 45, 46, 48, 49, 50, 51, 56, 57, 59, 60, 61, 63, 64, 67, 68, 69, 70, 77, 80, 81, 82, 89, 92, 94, 99, 120, 124, 128, 138, 144, 147, 148, 149, 150, 152, 153, 156, 157 and 168 however only one of the two answers was encoded in the OMR answer sheet and that the

questions the answer of which he was not sure he had marked the preliminary and the probable answers and later on arriving at the different conclusion he marked the other answer, was not found satisfactory. The petitioner however failed to explain satisfactorily as to why certain questions on the QPB were marked with pencil and others were marked with pen. The said petitioner also contended that his QPB does not contain keys of the answers to 180 questions as was found in the case of Sandarbh Kapoor. The petitioner also failed to explain his attempt to erase only selective hand written material on pages 8 and 9 of the QPB while leaving the rest untouched. The said petitioner was unable to explain the striking similarity and vast difference in his performance in three competitive examinations, as in CEE, 2005 his ranking is 24 whereas in AIEEE, 2005 and GGSIP, 2005 his ranking was 1,01,125 and 15,009 respectively and his percentage of marks in qualifying examination was measly 68% and he scored only 33 marks out 120 marks in 30 questions attempted by him before the EDC.

39. The charges stipulated against the petitioner have already been detailed hereinbefore in earlier paras as well as the replies to the show cause notices which were given to him. The petitioner was also given the

copies of the subject experts after the show cause notice dated 23rd February, 2006.

40. In the show cause notices dated 23rd February, 2006, it was specifically brought to the notice of the petitioner that mobile phones were recovered from Mr. Anshul Aggarwal and Mr. Somiya Aggarwal and the examination of these candidates was cancelled and they were asked to leave the examination hall immediately. Mr. Anshul Aggarwal had also disclosed to the Centre Superintendent about answer keys consisting of a set of numerals for questions Nos. 168 to 179. It was categorically stipulated in the show cause notice that this circumstance has created a serious doubt about the use of unfair means by other candidates. It was subsequently on account of bunching of marks another pattern was revealed and still later on comparison of other OMRs and the answers, the similarities in the answers especially in the wrong answers and the questions not attempted and same wrong option for the wrong answer and substantial number of same correct answers, it transpired that it would have been possible on account of use of unfair means in the examinations. The case of the respondents is not that Anshul Aggarwal and Somiya Aggarwal from whom the mobile phones were recovered had

communicated the same to the petitioner directly. In the case of petitioner, it has not been possible to get the direct evidence of communication of answer digits on the mobile phone and in the absence of direct evidence the other evidence which is his attempt to erase the written material from his QPB, the comparison of the QPBs of different candidates, his performance in solving 30 questions given to him and the evidence regarding his performance in other competitive examinations i.e his ranking in AIEEE, 2005 conducted by Central Board of secondary Education was 101125 and in GGSIP, 2005 conducted by Guru Gobind Singh Inderprastha University was 15009 whereas in CEE it was 24, have been considered. Whether this evidence in the absence of direct evidence was material and relevant? What is also to be seen is whether the enquiry which has been conducted by the respondents is fair and had afforded adequate opportunity to the petitioner to defend themselves and the inferences drawn by the EDC and respondents are not based on surmises and conjectures and decision does not suffer from procedural improprieties.

41. A lot of emphasis had been laid during the arguments about non-recovery of mobile phones and non-linking between the petitioner with the

candidates from whom the mobile phones were recovered and the absence of invigilators report. It is apparent that the case of the petitioner is not of direct evidence. As a principle, it cannot be held that whenever there is no report from the Invigilator indicating adoption of unfair means in any examination or till a link is established between the petitioner and those persons from whom the mobile phones were recovered and who admitted receiving the answers to the questions in SMS, the respondents could not come to a conclusion about the adoption of unfair means by the petitioner. There is no bar for the Expert committee of the respondents to come to a definite conclusion about the adoption of use of unfair means in the examination in absence of recovery of mobile phones and a link between Somiya Aggarwal and Anshul Aggarwal and the petitioner. In Union Public Service Commission (supra), the Supreme Court had held that where an expert body comes to a conclusion of a fact, the same should not be ordinarily interfered with by a court of law. In this case, the candidates had appeared in the written examination for Indian Engineering Services and the examiner while examining the answer paper in Civil Engineering paper II reported that the candidate having the next roll number was suspected to have copied the answer paper of the respondent. The papers of two students were, therefore, examined by an

expert committee which confirmed that the candidates had copied from each other and there after a show cause notice was issued to both the candidates and after giving a due hearing they were debarred from appearing in any competitive examination for a period of 10 years. It was held by the Apex Court that mere absence of report would not be sufficient to exonerate the delinquency as in a matter like this it will be difficult to get direct evidence and in such circumstances, if an enquiry is held to be fair and which affords the candidates adequate opportunity to defend themselves, the matter should not ordinarily be examined by courts with same strictness as applicable to criminal charges. The Supreme Court, however, had reduced debarment from ten years to five years.

42. In another matter, Guru Nanak Dev University and another (supra), the Apex Court had held that though the incriminating material was not recovered from the candidate, however, it was immaterial because the answers tallied with the answers found on the incriminating material which was also confirmed by subject expert on comparison. The definition of unfair means was held to be inclusive and not exhaustive and it was held that so long as the University had communicated the charges to the candidate in clear terms and given him an opportunity to defend

himself, it can not be held that he is not guilty simply because he is not covered specifically by any of the clauses of the Ordinance. A Full Bench of Allahabad High Court in Triambakpati Tripathi (supra) relying on AIR 1966 Supreme Court 875, Board of High School and Intermediate Education Vs. Bagleshwar Prashad had observed that in the matter of adoption of unfair means, direct evidence may some time be not available and in such cases the question will have to be considered in the light of probabilities and circumstantial evidence, however, such an order which is passed by the expert bodies, the High court does not sit in appeal over the decisions and the jurisdiction is limited to see if the order in question is not supported by any evidence at all. In this case, petitioner had given the square root of 45.5625 as 7.675 without doing rough work or calculation and given an explanation that he worked out the square root orally. The Examination Committee was of the opinion that it was not possible to accept the explanation given by the candidate which was rejected and consequently the inference drawn by the Committee that the candidate had found the square root by some improper method was accepted. In the present case the subject experts had opined that questions in CEE, 2005 could not be answered or solved without rough work. The petitioner had almost not carried out any rough work and whatever rough work had

been carried out was found to be insufficient to answer all the questions in different subjects. The explanation to the contrary given by the petitioner has not been accepted and in the present facts and circumstances the opinion of subject experts that rough work was required to solve the questions cannot be faulted and differed with by this court.

43. Whether the EDC (Examination Disciplinary Committee) had sufficient evidence to deduce necessary inference to prove the facts in issue? Whether the petitioner have used unfair means in the examination or not? The question paper book containing five digit keys were before the EDC as well as OMR sheets. Comparison of OMR sheets of the petitioner with the students, Rajat Parihar and Sandarbh Kapoor revealed striking similarity in the pattern of answers given by the petitioner. Although the answers were not descriptive but objective where one of the options out of the four options given to the petitioner was to be chosen. The petitioner has contended that probability theory on the basis of which the petitioner have been found to be guilty was not put to them. The experts report was given to the petitioner with regard to statistical impossibility on account of commonality of result. The statistical impossibility is computed on the basis of the probability theory. The

petitioner has attempted wrong answers for the same questions except some questions which were not attempted by the petitioner. Coupled with this fact, the other incriminating circumstance is that the questions which have not been attempted by the petitioner are also same. This is further compounded by the fact that almost all the correct answers of the petitioner and other two candidates were also the same except few mistakes here and there which has resulted in slight difference in the marks obtained by them and their different rankings. Regarding the comparison of the QPB of the petitioner with that of Sandarbh Kapoor, to whom a series 16 QPB was given, which was referred to in second show cause notice dated 7.4.2006 regarding the proposed punishment and no reference was made about the same in the first show cause notice dated 23.2.2006 it has been explained that the same was done only to explain the bunching of rank 20-25. All questions in different series were the same and the only difference was in the arrangement of the questions which too was in a methodical pattern and that the person encoding series 14 would not have any problem in encoding series 16. Question nos. 1-10 and 11-60 of series 14 were similar to question nos. 51-60 and 1-50 respectively of series 16. Question nos. 61-70 and 71-120 of series 14 were similar to question nos. 111-120 and 61-110 respectively of series 16. Question nos.

121-130 and 131-180 of series 14 were similar to question nos. 171-180 and 121-170 respectively of series 16. The petitioner and the candidate Sandarbh Kapoor secured a rank of 24 and 25 respectively and comparison of the OMR sheets of the petitioner with that of Sandarbh Kapoor made evident the striking similarity though it was an objective type paper. The reply and explanations of the petitioner have not found to be satisfactory. This will constitute sufficient evidence of outside help taken by the petitioner which fact is further substantiated by the facts that the performance of the petitioner in the qualifying examinations and his performance in solving 30 questions given to him during the hearing after show cause notices, does not commensurate with his performance in the CEE, 2005 examination. The ranking of the petitioner in other competitive examination also augment inference drawn by the EDC that the petitioner had taken outside help in attempting the question paper. No plausibly acceptable reason has been given by the petitioner for attempting to erase certain material written on the QPB while other written work was left untouched and EDC has not believed his version. The explanations given by the petitioner has not been believed and in the facts and circumstances it will not be appropriate to draw other inference different from the

inference drawn by the EDC and to hold that external source was not used by him and not to impose punishment on the petitioner.

44. From the evidence which was before the EDC and the respondents, it is therefore difficult to contend that the inference drawn by the EDC and the respondents are based on mere speculation or conjectures. There were material facts or circumstances on record from which the inference have been drawn and especially since the standard of proof is not of 'beyond reasonable doubt', but of 'preponderance of probabilities'. Therefore the inferences drawn by the respondents that the petitioner has used unfair means in the examination cannot be faulted in the facts and circumstances.

45. Though the petitioner very laboriously pointed out certain variations in different show cause notices given to the petitioner and variations between the show cause notice and the report to the Central Bureau of Investigation but taking the totality of facts and circumstances and the show cause notices dated 23rd February, 2006 and the reply given by the petitioner and the personal hearing given to him during which also the effort was made to ascertain the capability of the petitioner by giving him

30 questions to be solved, reflects nothing but that the charges were communicated to the petitioner cogently and reasonable opportunity of being heard was given. In the present facts and circumstances, it can not be doubted that the opportunity which was given to the petitioner was genuine and not an empty public relations exercise. Pursuant to the recommendation of the EDC, the notices were again given stipulating the punishment proposed and the reply given by the petitioner had also been considered and in the circumstances it will not be correct to draw an inference that the petitioner had not been given opportunity of being heard or the opportunity given to the petitioner was an empty public relations exercise.

46. A lot of emphasis was also placed by the learned counsel for the petitioner on slight differences in some of the answers given to 180 questions by the petitioner. Even if those questions which had been attempted differently are considered, the answers to other questions especially the wrong questions and their wrong options and almost same questions which remained un-attempted and other factors, lead to inevitable probable conclusion that outside help was received by the petitioner.

47. The evidence against the petitioner is substantial and the conclusion of guilt can be drawn from the said evidence in the first instance itself and all the facts unequivocally points towards guilt of the petitioner. The circumstances on the basis of which the EDC and respondents have drawn the inference can not be termed illusory or based on surmises. The reasons which are available on record and in the orders passed by the respondents, it is apparent that the respondents have consciously applied their mind to the facts of the case and they have acted fairly to do justice in the facts and circumstances.

48. Under the relevant Ordinance the respondents are entitled to impose a maximum penalty of debarment from examinations for a period of five years. The respondents are invested with the discretion to impose proper punishment keeping in view the magnitude and amplitude of the misconduct. Though the learned counsel for the petitioner has contended that Anshul Aggarwal and Somiya Aggarwal from whom the mobile phones were recovered, only their examination has been cancelled as the examination papers was taken from them and they went out of the examination hall and thereafter nothing has been done against them

whereas against the petitioner not only examinations for CEE, 2005 has been cancelled but he has been further debarred for a period of five years from 2005. This is not disputed that the quantum of punishment in disciplinary matters is to be imposed by the concerned authorities and this Court under Article 226 of Constitution of India will not interfere with the same as the role of the Court is only secondary and what is to be seen is whether the authorities have acted illegally or have taken relevant factors into consideration and whether the view taken by the authorities is such which no reasonable person could have taken. In view of the substantial evidence before the respondents, it cannot be held that they have acted illegally or has omitted relevant factors into consideration. The petitioner did not admit his guilt and use of unfair means could be inferred by detailed investigation and effort. The case of the petitioner is therefore, not the same as that of two persons from whom the mobile phones were recovered and whose examination was cancelled. Though some variations in the show cause notice have been pointed out and also some variations in the performance of the petitioner, however, that does not reflect any procedural impropriety or such an illegality which must be interfered with under Article 226 of the Constitution of India in consonance with a few precedents which have been discussed herein above. The

petitioner is unable to point out which other relevant matters have not been taken into account and what irrelevant matters have been taken into account to draw the inference as has been drawn by the EDC and the respondents. In my opinion, the decision of EDC cannot be termed absurd or perverse nor it will be appropriate to substitute different inferences with the inference drawn by EDC even though theoretically some other inferences may be drawn, which have not been drawn by this court in the present facts and circumstances.

49. As discussed earlier, the petitioner has been imposed with the maximum penalty of debarment for a period of five years, however, reason for inflicting the maximum penalty has not been cogently stipulated by the respondents. Consequently, despite the role of the Court being secondary, it will be appropriate in the totality of facts and circumstances to modify the punishment inflicted on the petitioner to be of cancellations of their result for CEE, 2005 and further debarment for a period of two years from 2005 instead of debarment for a period of five years. Consequently, the petitioner shall be entitled to appear in the examination of respondents only from the academic years 2007 and afterwards.

50. Therefore, the writ petition seeking quashing of order holding that the petitioner had used unfair means during the CEE, 2005 examination is dismissed. However, regarding the punishment imposed the writ petition is disposed of with the direction that the punishment awarded to the petitioner for cancellation of his examination for CEE, 2005 and debarment for a period of five years from 2005 shall now be cancellation of his CEE, 2005 examination and his debarment for a period of two years only from 2005. With these observations, the writ petition is disposed of and parties are left to bear their own costs.

February 26, 2007
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ANIL KUMAR J.